

Office of the Independent Police Auditor

Monthly Report

August 2012



Office of the
**INDEPENDENT
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

September 10, 2012

This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (A), which requires the Office of the Independent Police Auditor (OIPA) to submit reports to the Citizen Review Board. This report provides information for the period August 1, 2012 through August 31, 2012.¹

Quantitative Report

	Number of Cases Filed ²	Number of Open Cases ³	Number of OIPA Investigations Concluded ⁴	Number of Cases Appealed to OIPA ⁵	Number of Cases Appealed by CRB ⁶
June 27, 2011 – October 31, 2011	32	53	0	0	0
November 2011	11	60	0	0	0
December 2011	4	56	0	0	0
January 2012	6	58	0	0	0
February 2012	14	57	0	0	0
March 2012	7	61	0	1	0
April 2012	6	55	0	1	0
May 2012	10	54	0	0	0
June 2012	13	61	1	0	0
July 2012	7	58	0	0	0
August 2012	12	60	0	0	0

Types of Cases Filed

Citizen Complaints	6
Administrative Investigations	1
Comments of Non-Complaint	5
TOTAL	12

Citizen Complaints Received per Department

OIPA	3
BART Police Department	3
TOTAL	6

Complaints/Investigations Initiated During Reporting Period**Actions Taken/# of Days Elapsed⁷**

During the month of August 2012, 3 Citizen Complaints were received by the OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (OIPA 12-43) (IA2012-074)	Failure to Enforce Rules on BART Trains	OIPA notified BART PD, which initiated an investigation.	38
2 (OIPA 12-47) (IA2012-065)	Improper Issuance of a Citation	OIPA notified BART PD, which initiated an investigation.	27
3 (OIPA 12-49) (IA2012-071)	Neglect of Duty; Conduct Unbecoming an Officer	OIPA notified BART PD, which initiated an investigation.	17

During the month of August 2012, 3 Citizen Complaints were received by the BART Police Department:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2012-068)	Use of Force; Conduct Unbecoming an Officer	An investigation was initiated.	24
2 (IA2012-072)	Conduct Unbecoming an Officer	An investigation was initiated.	13
3 (IA2012-073)	Courtesy	An investigation was initiated.	15

During the month of August 2012, 1 Administrative Investigation was initiated by the BART Police Department:

Investigation # (IA Case #)	Nature of Investigation	Action Taken	Number of Days Elapsed Since Investigation Initiated
1 (IA2012-066)	Use of Force	BART PD initiated an investigation.	27

During the month of August 2012, 5 Comments of Non-Complaint were received by the BART Police Department:

Comment # (IA Case #)	Nature of Comment	Action Taken	Number of Days Elapsed Since Comment Filed
1 (IA2012-069)	Performance of Duty	An investigation was initiated.	24
2 (IA2012-067)	Neglect of Duty	An investigation was initiated.	25
3 (IA2012-064)	Performance of Duty; Courtesy	An investigation was initiated.	34
4 (IA2012-063)	Courtesy	An investigation was initiated.	34
5 (IA2012-061)	Neglect of Duty	An investigation was initiated.	40

Complaints/Investigations Concluded During Reporting Period

Dispositions/# of Days Elapsed

During the month of August 2012, 5 Citizen Complaints were concluded by the BART Police Department:

Complaint # (IA Case #)	Nature of Complaint	Disposition ⁸	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2012-018)	<u>Police Officer #1</u> • Performance of Duty	<u>Police Officer #1</u> • Performance of Duty – Not Sustained	196	170
2 (IA2011-080)	<u>Police Officer #1</u> • Courtesy • Procedure	<u>Police Officer #1</u> • Courtesy – Not Sustained • Procedure – Not Sustained	294	283

3 (IA2011-078)	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Use of Force • Conduct Unbecoming an Officer • Use of Force Reporting 	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Use of Force – Unfounded • Conduct Unbecoming an Officer – Unfounded • Use of Force Reporting – Unfounded 	287	252
4 (IA2011-074)	<u>Civilian #1</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer • Courtesy • Uniform Regulations • Citation Procedures (Mailing Parking Citations) 	<u>Civilian #1</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Not Sustained • Courtesy – Not Sustained • Uniform Regulations – Unfounded • Citation Procedures (Mailing Parking Citations) – Sustained 	294	273
5 (IA2011-060)	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Arrest or Detention • Conduct Unbecoming an Officer • Courtesy • Procedure 	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Arrest or Detention – Sustained • Conduct Unbecoming an Officer – Sustained • Courtesy – Sustained • Procedure – Sustained 	344	317

During the month of August 2012, 5 Comments of Non-Complaint were addressed by the BART Police Department:

Comment # (IA Case #)	Nature of Comment	Disposition	Number of Days Elapsed Since Comment Filed	Number of Days Taken to Address Comment
1 (IA2012-067)	Neglect of Duty	Supervisory Referral	25	12
2 (IA2012-064)	Performance of Duty; Courtesy	Supervisory Referral	34	7
3 (IA2012-063)	Courtesy	Supervisory Referral	34	3

4 (IA2012-061)	Neglect of Duty	Supervisory Referral	40	28
5 (IA2012-060)	Performance of Duty	Supervisory Referral	52	40

¹ In addition to reporting on complaints received by the BART Police Department, the Citizen Oversight Model requires reporting on all complaints received by the "Citizen Board, Office of the District Secretary, and other District departments." As complaints received by the Citizen Board are customarily directed to the OIPA for further action, such complaints are included in the Quantitative Report above; the OIPA is not aware of additional complaints about the BART Police Department received by the Office of the District Secretary or other District departments.

² This number includes all Citizen Complaints filed against members of the BART Police Department, as well as Administrative Investigations generated internally by BART Police Department members (as opposed to being filed by a citizen). This number also includes what the BART Police Department manual defines as "Comments of Non-Complaint;" these are comments "on the actions of a department employee, where the reporting party expressly states that they do not want to make a complaint." (BART Police Department Policy Manual, Policy 1020.1.1(e)).

³ This number indicates all investigations that are open as of the end of the reporting period. It includes Citizen Complaints (regardless of whether the investigation is being conducted by OIPA, the BART Police Department, or both), Comments of Non-Complaint, and Administrative Investigations.

⁴ This number includes all cases completed by OIPA during the reporting period that are required by the BART Citizen Oversight Model to be submitted to the Citizen Review Board. It therefore includes independent investigations, as well as reviews of completed BART Police Department investigations initiated via appeal from a complainant. Unless otherwise noted, it does not include reviews of BART Police Department investigations initiated at the discretion of OIPA, which happen commonly and do not always generate a formal report; it also does not include reviews conducted by OIPA of complaint investigations where the complaint was filed with OIPA but did not fall under OIPA's investigative jurisdiction.

⁵ This number refers to appeals filed with OIPA by complainants who have been issued the findings of the BART Police Department's internal investigation into their complaint regarding on-duty incidents. The OIPA has a responsibility to review such appeals pursuant to the BART Citizen Oversight Model, Chapter 1-04 (E).

⁶ This number refers to all appeals initiated by the Citizen Review Board after receiving and reviewing the findings issued by the OIPA in a given case. The routes of all such appeals are described in detail in the BART Citizen Oversight Model, Chapter 1-04 (B) (iv-v).

⁷ In all cases where it appears in this report, unless otherwise noted, the number of days elapsed refers to the number of days between the date of the complaint and the date of the report (as noted on the front page).

⁸ In defining the "Disposition of Internal Investigations," the BART Police Department Manual indicates that the Chief of Police will determine a finding of disposition for each allegation as follows:

(a) Unfounded - The investigation clearly established that the allegation is not true, or that the complaint was frivolous per Penal Code § 832.5(c).

(b) Exonerated - The investigation clearly established that the act, which provided the basis for the allegation of misconduct, did occur but was justified, lawful, and proper.

(c) Sustained - The investigation disclosed sufficient evidence that the act occurred and that it did constitute misconduct.

(d) Not-Sustained - The investigation established that there is not sufficient evidence to either sustain the allegation or to fully exonerate the employee. This includes situations in which the reporting party and/or witness(es) fail to cooperate in disclosing information needed to further the investigation, or they are no longer available. (BART Police Department Policy Manual, Policy 1020.7)